

36

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**Original Application No.685 of 2012**  
**Cuttack, this the 18<sup>th</sup> day of September, 2015**

Sri M.K. Nayak .....Applicant

-Versus-

Union of India & Others ..... Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to the reporters or not? *My*

2. Whether it be referred to PB for circulation? *yes*

*R.C. Misra*  
**(R.C. MISRA)**  
**MEMBER(A)**

37

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**Original Application No.685 of 2012**  
**Cuttack, this the 18<sup>th</sup> day of September, 2015**

CORAM  
**HON'BLE MR. R.C. MISRA, MEMBER (A)**

Sri Mahendra Kumar Nayak,  
Aged about 38 years,  
Son of Gobardhan Nayak ,  
At/P.O. Nandapur,  
Dist-Koraput.  
Presently working as GDSMD Nandapur S.O.,  
Dist-Koraput.

...Applicant

(Advocate: M/s. D.P. Dhalsamant, N.M. Rout )

**VERSUS**

Union of India Represented through

1. Director General of Posts,  
Govt. of India,  
Ministry of Communication,  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi-110001.
2. Chief Post Master General,  
Odisha Circle, Bhubaneswar,  
Dist-Khurda-751001
3. Post Master General,  
Berhampur Region,  
At/PO-Berhampur,  
Dist-Ganjam.
4. Senior Superintendent of Post Offices,  
Koraput Division, At/Po-Jeypore(K),  
Dist-Koraput-764001.
5. Asst. Superintendent of Post Offices,  
Koraput Sub-Division,  
Dist-Koraput-764020

... Respondents

(Advocate: Mr. S. Behera)

**ORDER**

**R.C. MISRA, MEMBER (A)**

Applicant in the present O.A. is working as GDSMD, Nandapur, S.O.  
in the District of Koraput. He has approached this Tribunal for direction to be  
issued to the Respondents i.e., the authorities of the Department of Posts, to pay



him the differential amount along with other benefits for the period he worked as Postman i.e., from 01.04.2008 to 04.11.2011 except 02.03.2009 to 30.04.2009.

2. The facts of the case are that the applicant was appointed as GDSMD, Nandapur, S.O. under the control of Asst. Superintendent of Post Offices (ASPO), Koraput Sub-Division i.e., Respondent No.5 and has been continuing in this Office. While working as such, the regular Postman at Nandapur, S.O. retired on reaching the age of superannuation on 31.03.2008 and consequently, the applicant was directed to work as Postman along with his own duties and accordingly, he took charge of the same on 01.04.2008. He performed his duties till 04.11.2011, on which date he was relieved by the Postman who was regularly posted. The applicant submitted a representation to the Respondent No.5 on 03.08.2010 for grant of remuneration <sup>of</sup> ~~to~~ the post of Postman. The Respondent No.5 on the other hand, directed the Sub-Postmaster (SPM), Nandapur, S.O to inform under which authority the applicant was ordered to work as Postman. He also called for the attested order book of Nandapur, S.O regarding engagement of applicant as Postman. The applicant was also asked as to why he performed his duties without insisting on written order for work and why he remained silent on the claim of payment of daily wages for the post of Postman Nandapur, S.O from 01.04.2008 till his date of representation. Although the applicant submitted his explanation, nothing <sup>was</sup> ~~has~~ done by the Department with regard to the payment of daily wages for the period he worked as Postman. Applicant also made a representation to the Respondent No.4 i.e., Senior Superintendent of Post Offices (SSPO), Koraput Division, but it was of no avail. The applicant also claims that similarly situated GDS employees viz. Niladri Chandra Patra and Prafulla Nayak have been paid wages for the period they worked as Postman, whereas the

P. K.

applicant being similarly placed has not received the wages for the period he had worked. With this grievance applicant has approached this Tribunal.

3. Respondents have filed a counter affidavit which reveals that the applicant who was GDSMD of Nandapur, S.O was directed by the Sub Postmaster (SPM) of Nandapur, S.O to manage the mail delivery duty in addition to his own duties because of the fact that the post of Postmaster in that S.O. had fallen vacant due to the retirement of the incumbent. The Sub-Postmaster Nandapur, S.O passed this order to ensure smooth functioning of the sub-post office with a view to mitigate the needs of the general members of the public. However, applicant did not prefer any representation to the Assistant Supdt. of Post Offices, (I/C) Koraput Sub Division who is his appointing authority making a claim of daily wages immediately on receipt of the order of the Sub Postmaster, Nandapur, S.O. In the counter affidavit, it has been submitted that the applicant performed the said duty of a Postman from 01.04.08 till 04.11.2011. However, he has been paid the daily wages for Postman for the period from 02.03.2009 to 30.04.2009 and for this period he was ordered by the Asst. Supdt. of Post Offices, Koraput Sub Division to perform such duty. The rest of the period of his working is not covered by the order of Asst. Supdt. of Post Offices, and the wage for this period attached to the job of Postman was therefore not paid to the applicant. Even though the applicant submitted representation dated 03.08.2010 before the Asst. Supdt. of Post Offices, in this regard the request of the applicant was not considered on the ground that he was directed by Sub Postmaster only to manage the mail delivery work of Nandapur S.O. and was not directed to work on daily wage basis. The representation of the applicant given to the Sr. Supdt. of Post Offices, Koraput Division was also turned down on the ground that he was not ordered specifically to work against the post on daily wage basis. He could have made an early

*P.*

representation to the ASPO in this regard but he remained silent for a long time and therefore his belated application was not considered. With regard to the submission of the applicant that the cases of Niladri Chandra Patra and Prafulla kumar Nayak placed in similar situation were favorably considered, the Respondents have replied that in these two cases the employees concerned worked specifically on being directed by their competent appointing authorities to manage the vacant posts in exigencies of public interest. Therefore, the applicant cannot claim parallel treatment with these employees. On the other hand, in the counter affidavit the Respondents have submitted that the applicant <sup>should</sup> ~~could~~ have declined to manage the work of Postman when he received the said order on 01.04.2008 or he was at liberty to represent to the ASPO(I/C) for sanction of daily wages as entitled to a Postman. With these submissions the Respondents <sup>have</sup> ~~are~~ pleaded that the claim of the applicant is devoid of merit at this stage.

4. Having heard Ld. Counsels from both sides I have also perused the records.

5. Ld. Counsel for the Respondents has also submitted written note of submission in this case. The first point to be noted is that it is not denied by the Respondents that the applicant had performed duties as Postman from 01.04.2008 to 04.11.2011, which is a substantially long period. The applicant also has been paid the daily wage for Postman for a part of this period which was approved specifically by the ASPO <sup>who</sup> ~~which~~ is said to be the competent authority. The only reason assigned by the Respondents for non payment of daily wages for rest of the period is that the ASPO did not pass any order in this regard. It was the Sub Postmaster of the concerned post office who had directed the applicant to manage work because of the retirement of the regular incumbent. However, this period continued for a very long time and therefore, the Department admits that

*P.*

the concerned employee did perform the duties of a Postman for a substantially long period. It is also admitted that the Sub Postmaster had passed such order in the interest of public and <sup>otherwise</sup> there would have been hardships, if he would not have made the arrangements. Another objection which has been raised by the Respondents is that the applicant gave a representation only on 03.08.2010 for payment of his daily wages as Postman whereas he had started working from 01.04.2008 onwards. For the period from 02.03.2009 to 30.04.2009 he was paid the wages because of the orders of ASPO, Koraput, Sub Division. Therefore, it appears that the various objections raised by the Respondents against the claim made by the applicant are at best technical in nature. There is no denial regarding the applicant having performed his duties of Postman in addition to his own duties as per the direction of his immediate superior in the public interest. The matter for decision is whether the applicant has a right to make a claim for appropriate wages for the work that he admittedly had performed for the Department. Barring certain procedural <sup>lacunae</sup> ~~follow up action~~ it is quite clear as a broad day light that applicant's claim should have been considered and the department should not have deprived him of his rightful dues, merely because of a particular authority did not approve the arrangement and/or the applicant gave a delayed representation claiming daily wages. When the Department agrees that the duty was substantially performed, they could have considered to regularize the matter by taking post facto approval of the competent authority. In the counter affidavit, it is alleged that the applicant gave a delayed representation with an ill intention causing unwarranted financial burden to the Department. This appears to be an unfounded allegation since the applicant has made a claim for payment of wages for the duties performed and this is certainly not going to cause any financial distress to the Department. Even if the orders of the ASPO

were not obtained the order of the Sub Postmaster, Nandapur S.O. should be treated as bonafide since the applicant had to discharge duties in the larger public interest. There was a vacancy because of the retirement of the regular incumbent and the applicant was asked to fill up the gap as a temporary measure. What is important is that he has performed his job and the Department should have considered the matter of paying him his rightful dues, <sup>in</sup> response to the representation preferred by the applicant on 03.08.2010. When he has performed duty up to 04.11.2011 and he is making a representation on 03.08.2010, the same should not have been treated as a delayed representation by the Department. Therefore, the stand taken by the Department appears to be unjustified in this regard. It is also wrong to draw a distinction that he was directed to **"manage"** the work by the SPM and he was not directed by the ASPO to work as Postman with daily wages. It appears to me that there is <sup>no</sup> substantial issue involved in such a distinction. It is further to be noted that the employee has not **"managed"** the work for a short period, but for a fairly long period of time. In such a situation, to deprive him of higher wages attached to the post would in my view amount to gross injustice and harassment to the applicant.

6. The Ld. Counsel for the Respondents in the written notes of submission has submitted that since the appointing authority had not passed his orders confirming the engagement of the applicant as Postman, his case was not considered for payment of differential emoluments. This argument is not acceptable since post-facto approval from the competent authority could have been accorded on the basis of the proposal of a Sub-Postmaster who had initially directed the applicant to manage the work of Postman. It is also to be taken into account that nowhere the Respondents have submitted that the applicant did not perform his duties satisfactorily and having obtained service from him, the

43

O.A. No.685 of 2012  
M.K. Nayak -Vrs- UOI

Departmental Authorities cannot deny him his rightful dues in exchange. State is a model employer and therefore the employees who perform duties in a bonafide manner for the interest of the public should not be subjected to any harassment on the ground of certain procedural formalities. The Department<sup>l</sup> knew very well from the beginning that the applicant was rendering service as Postman and he also made a representation on 03.08.2010 in this regard. There is therefore no ground as to why the Department should ignore this claim. I have also come across a submission made in the counter affidavit made by the Respondents that the *"applicant should have declined to manage the work of Postman Nandapur S.O. when he received the order on 01.04.2008, or he was at his liberty to represent to the ASPOs (I/C) for sanction of pay at par with Postman scale on daily wage basis"* I fail to understand the implication of such submission. Does the Department mean to convey a message that the employees should flout the legitimate orders of their superior authorities? The applicant was asked by the SPM to manage the work of Postman in public interest and had he declined<sup>to do</sup> so it<sup>l</sup> <sup>l</sup> would have been ~~was~~ only disobedience of the orders of his higher authorities. Such an action by an employ<sup>ee</sup><sup>l</sup> could also be very much against the public interest. This submission of the Departmental Authorities in the counter affidavit appears to me a matter of great concern and I am of the opinion that such a statement should not have been made by the concerned authorities. The Departmental Authorities should not have made such an astounding statement in order to just save themselves <sup>l</sup> of the responsibility of paying the differential wages to the applicant for the duties performed under the direction of his superior authority in the larger public interest.

7. In the consequences<sup>l</sup> therefore, I find substantial force in the claim of the applicant. Accordingly, Respondents are directed to make payment of


*l*

44

O.A. No.685 of 2012  
M.K. Nayak -Vrs- UOI

differential amount to the applicant for the period he had worked as Postman, which should be done within a period of ninety days from the date of receipt of this order.

8. In the result, the O.A. is allowed as above. No costs.

  
**(R.C. MISRA)**  
**MEMBER(A)**

K.B.

